

PUCKETT
Daniels
N. Green

April 14, 1955
Opinion No. 55-83

REQUESTED BY: Mr. Vernon Stern, Pest Control Board
Sky Harbor Airport
Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Harmon S. Puckett, Assistant Attorney General

QUESTIONS: (1) May the Pest Control Board promulgate rules requiring all transient dusters or sprayers to fly to Phoenix, Arizona, for the inspection of workable navigation lights on their airplanes?

(2) May the Pest Control Board promulgate rules requiring each licensed applicator to turn in a report of work done each month, regardless of whether or not any work is performed during any given month? That is to say, may the Board require a report from the applicator, showing that he has done no work during any given month?

(3) May the Pest Control Board use its appropriation for other current expenditures for the purpose of publishing and distributing to interested parties a lecture series on pest control given at the University of Arizona, in co-operation with the Pest Control Board?

CONCLUSIONS: (1) Yes
(2) Yes
(3) Yes.

The provisions applicable to Question (1) are as follows:

Section 49-1612, A.C.A., 1939.

"Administration.--The board of pest control applicators shall enforce the provisions of this act and shall have power to enforce administrative rules and regulations not in conflict herewith."

Mr. Vernon Stern
Pest Control Board

April 14, 1955
Page Two

Section 49-1609, A.C.A., 1939.

"Enforcement.--For purposes of enforcement of this act the board of pest control applicators, or its duly authorized agents, after first making request and obtaining permission of the owner, operator, or custodian thereof, are authorized to enter upon any public or private premises at reasonable times in order to inspect aircraft or ground equipment subject to this act, or crops, animals, or any other property actually or possibly exposed to substances applied by such equipment." (Emphasis supplied)

It is observed that the board is required to enforce the provisions of this act by virtue of Sec. 49-1612. The same section prohibits the board from making rules and regulations in conflict with any of the provisions of the act. An examination of the act reveals that the only possible conflict would arise with Section 49-1609, which provides that the board, with permission, is authorized "to enter upon any public or private premises at reasonable times in order to inspect aircraft." It therefore becomes necessary to determine just what effect the proposed rules would have, and whether or not there is a conflict. The proposed rules would simply establish a specific place for inspection which is not provided in Sec. 49-1609. This being true, there is no conflict with the provision, but simply reasonable regulation in furtherance of the administration of the act.

It is therefore the opinion of this office that it would be proper for the Board of Pest Control Applicators to promulgate rules requiring all transient dusters or sprayers to fly to Phoenix, Arizona, for the inspection of workable navigation lights on their airplanes.

The provisions applicable to Question (2) are as follows:

Section 49-1607, A.C.A., 1939.

"Reports to the board.-- (a) All applicators within thirty days after application shall furnish to the board a record of the persons for whom the operator has made application of pesticides, the location of the land where the pesticides were applied, the day, month, year and time of day of such application, the person or firm

Mr. Vernon Stern
Pest Control Board

April 14, 1955
Page Three

supplying the pesticide so applied, the trade name of the pesticide so applied, and the direction and estimated velocity of the wind at time of application." (Emphasis supplied)

"49-1612. Supra, Question (1)."

It is observed that Sec. 49-1607 provides specifically when reports of applications shall be made to the board by the provision that "all applicators within thirty days after application shall furnish to the board a record But the proposed rules would not necessarily be in conflict therewith. The proposed rules would require reports to be filed each month, regardless of whether or not the applicator had made an application. The effect would be to aid the board in determining if Section 49-1607 and the other provisions of the act are being complied with and fulfilled. Thus the proposed rules are not in conflict with the provisions but are reasonable regulations in furtherance of the enforcement and administration of the act.

It is therefore the opinion of this office that it would be proper for the Board of Pest Control Applicators to promulgate rules requiring a report from applicators showing that the applicator has done no work during a given month.

The provisions applicable to Question (3) are as follows:

Section 49-1608, A.C.A., 1939.

"Publications.-- (a) The board shall publish and distribute or have available upon request any information which may be required or which may appear upon any examination given to applicators and operators by the board. The board is also authorized to publish at such times and in such forms as it may deem proper, information concerning the use and application of pesticides in this state, and shall publish an annual report which shall contain a statement of moneys received and expended." (Emphasis supplied)

Section 10-924, A.C.A., 1939.

"Objects and purpose of appropriations classified and standardized.-- For the purpose of accounting, budgeting, allotting and reporting, all expenditures authorized by either the general

Mr. Vernon Stern
Pest Control Board

April 14, 1955
Page Four

appropriation act or by any separate or special act, shall be classed as one or more of the following general classes: 1. "Current expenditures," 2. "Fixed charges," 3. "Capital outlay," and 4. "Redemption of debt." Expenditures under these general classes shall be subdivided by the state auditor in accordance with the objects and character of the expenditures and in such manner that the true and actual cost of each object will reflect perpetually on his books.

"Current expenditures" shall be subdivided into: (a) personal services; (b) contractual services, including communication and travel; (c) supplies, materials and parts, and (d) current charges."

"Subdivision 57. Board of Pest Control Applicators.-- From the pest control applicators fund the following is appropriated:

Personal Services

Salaries - - - - -	\$4,900.00
Employers' contribution for Old Age and Survivors' Insurance and State Retirement - - - - -	270.00
Total Personal Services - - - - -	\$5,170.00
State Travel - - - - -	800.00
Other Current Expenditures - - - - -	3,150.00
Capital Outlay - Equipment - - - - -	200.00
Total Appropriation - - - - -	\$9,320.00

The board is clearly authorized by Sec. 49-1608 to publish information concerning the use of pesticides. A necessary part of the authority to publish is the right to distribute, or otherwise the entire purpose of the publication is defeated.

The question is not clear but we assume that the lecture series contains "information concerning the use and application of pesticides in the state".

An examination of the portion of Sec. 10-924 set forth, supra, together with the appropriation set forth, supra, reveals that "current expenditures" is subdivided in the appropriation in such a way that it lumps together as "other current expenditures" some subdivisions of "Current expenditures" as set forth in Sec. 10-924.

Mr. Vernon Stern
Pest Control Board

April 14, 1955
Page Five

Therefore, since the publication and distribution would be an ordinary cost of operating the department, the cost of the same would properly be a charge of "other current expenditures."

Therefore, it is the opinion of this office that a part of the appropriation to the Board of Pest Control Applicators for "other current expenditures" may be used for the purpose of publishing and distributing a lecture series on pest control.

ROBERT MORRISON
The Attorney General

Harmon S. Puckett
HARMON S. PUCKETT
Assistant Attorney General

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55-83